

Message Text

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ORIGIN L-03

INFO OCT-01 ARA-06 ISO-00 EB-07 STR-04 COME-00 TRSE-00

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L/EB;SBOND

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FM SECSTATE WASHDC

TO AMEMBASSY SAN SALVADOR IMMEDIATE

INFO AMEMBASSY GUATEMALA

AMEMBASSY MANAGUA

AMEMBASSY TEGUCIGALPA

AMEMBASSY SAN JOSE

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E.O. 11652: N/A

TAGS: ECON, ES

SUBJECT: DRAFT INSURANCE LAW

REF: SAN SALVADOR 5213 SAN SALVADOR 93

1. DEPT OFFICERS (ARA/CEN, L/ARA) MET WITH AMERICAN
INTERNATIONAL VICE PRESIDENT RONALD SHELP JANUARY 5 TO
DISCUSS DRAFT INSURANCE LAW AND PROBLEMS RAISED BY IT.
DEPT OFFICERS PROMISED SHELP THAT WHILE WE WOULD PROBABLY
WISH TO AVOID TAKING POSITION ON MERITS AT THIS TIME

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EMBASSY WOULD MAKE ITS INTEREST IN MATTER KNOWN TO APPRO-

PRIATE GOES OFFICIALS.

2. WE HAVE BEEN PROVIDED BY SHELPH WITH COPY OF LAW. PRELIMINARY ANALYSIS INDICATES THAT IT COULD RAISE VARIETY OF PROBLEMS MOST SIGNIFICANT OF WHICH FROM OUR POINT OF VIEW ARE 60 LOCAL EQUITY REQUIREMENT AND BAN ON CONDUCTING BUSINESS IMMEDIATELY UPON ENACTMENT OF LEGISLATION (WITHOUT ANY GRADUAL PHASEOUT AS HAS BEEN THE PRACTICE WHEN LEGISLATION OF THIS SORT HAS BEEN PASSED ELSEWHERE).

3. WE UNDERSTAND THAT THERE IS SOME POSSIBILITY THAT DRAFT LAW IN PRESENT VERSION COULD BE PASSED WITHOUT EXTENSIVE DEBATE, AND THAT US AS WELL AS LOCAL INSURANCE INDUSTRY IS PRESENTLY WORKING INFORMALLY IN EL SALVADOR TO SEEK CHANGES TO MITIGATE WORST EFFECTS. WHILE WE ARE PREPARED TO HAVE AFFECTED MEMBERS OF THE INDUSTRY CARRY PRINCIPAL BURDEN, WE DO BELIEVE IT DESIRABLE AT THIS TIME FOR EMBASSY TO MAKE KNOWN USG INTEREST AND POSSIBLE CONCERN TO APPROPRIATELY HIGH LEVEL GOES OFFICIALS, AND SUGGEST EMBASSY DRAW ON PARA 4 BELOW FOR INFORMAL ORAL DEMARCHE.

4. IT HAS BEEN BROUGHT TO USG ATTENTION THAT FAR-REACHING DRAFT LEGISLATION ON INSURANCE INDUSTRY IS NOW BEING CONSIDERED BY GOES. USG HAS NOT HAD OPPORTUNITY TO ANALYZE THIS LEGISLATION CAREFULLY, BUT WE UNDERSTAND THAT IT MAY RAISE SIGNIFICANT PROBLEMS FOR AMERICAN FIRMS OPERATING IN EL SALVADOR. WE ARE CONCERNED THAT ASPECTS OF LAW WHICH WOULD REQUIRE IMMEDIATE TERMINATION OF BUSINESS OPERATIONS UPON PASSAGE, AND/OR DIVESTMENT OF THE MAJORITY OF US-OWNERSHIP INTEREST, COULD BE APPLIED IN A MANNER WHICH WOULD BE CONFISCATORY. WE ASSUME THAT GOES WOULD WISH TO AVOID SUCH A SITUATION BOTH BECAUSE OF ITS CONTINUING DESIRE TO ATTRACT FOREIGN INVESTMENT, AND THE FACT THAT SUCH ACTIONS WOULD RAISE A VARIETY OF PROBLEMS UNDER APPLICABLE PROVISIONS OF US LEGISLATION. WE WOULD THUS HOPE THAT BEFORE ANY SUCH LEGISLATION IS ENACTED AND IMPLEMENTED, THAT ALL INTERESTED SECTORS OF THE ECONOMY WOULD HAVE AN OPPORTUNITY TO BE HEARD AND THAT LIMITED OFFICIAL USE

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IF THE SALVADORANIZATION PROCESS IS EFFECTUATED IT WILL BE UNDERTAKEN UNDER PROCEDURES AND OVER A TIME PERIOD THAT WILL PROVIDE AN ORDERLY TRANSITION AND NOT RESULT IN AN EFFECTIVE CONFISCATION OF FOREIGN-OWNED INTERESTS OR UNDUE HARDSHIP TO THE AMERICAN COMPANIES WHICH HAVE OPERATED IN EL SALVADOR FOR MANY YEARS.

5. FYI: IF INSURANCE LAW IS APPLIED IN CONFISCATORY

MANNER IT COULD TRIGGER EXPROPRIATION PROVISIONS OF
TRADE ACT (SECTION 502(B)(4)). TO THE EXTENT IT IS
DISCRIMINATORY (AGAINST US FIRMS) OR PLACES AN UN-
JUSTIFIABLE OR UNREASONABLE BURDEN OR RESTRICTION ON
US COMMERCE, SECTION 301 OF TRADE ACT COULD BE APPLICABLE.
HOWEVER, OFFICE OF SPECIAL TRADE REPRESENTATIVE (STR)
HAS ESTABLISHED GUIDELINES INDICATING PROCEDURE TO BE
FOLLOWED BY PARTY THAT BELIEVES FOREIGN GOVERNMENT HAS
VIOLATED THESE STIPULATIONS. INTERESTED PARTY MUST FILE
PETITION WITH STR PROVIDING FULL INFORMATION ON ALLEGED

DISCRIMINATORY ACTION. A SECTION 301 INTERAGENCY
COMMITTEE IS THEN FORMED TO CONSIDER THE PETITION,
DETERMINE WHETHER THERE HAS IN FACT BEEN A VIOLATION,
AND RECOMMEND A POSSIBLE COURSE OF ACTION. END FYI. KISSINGER

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